

As public servants, the performance of our official duties is subject to public scrutiny.

Like other states, North Dakota has "sunshine laws" which provide that all government records and meetings must be open to the public unless a specific statute requires or authorizes a meeting or record to be closed.

The best protection for public officials is to have a good working knowledge of the open records and meetings laws, and the exceptions that apply.

My office has prepared this brochure to help explain the open records and open meetings laws. I encourage you to review this and other information we provide, and to contact your attorney for advice on these laws. We will be happy to work with your attorney to resolve any questions that may arise.

Wayne Stenehjem
Attorney General

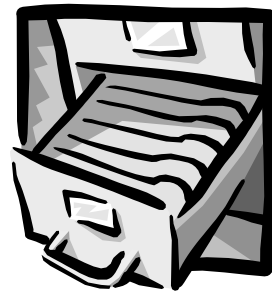
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Opinions and other information relating to the Open Records and Open Meetings laws can be accessed on the Attorney General's website, at:

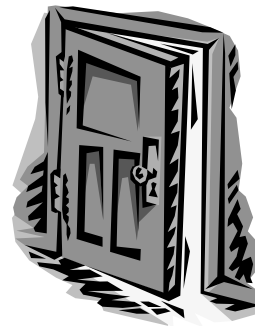
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A Guide for Public Officials to

North Dakota's Open Records



and Open Meetings



Office of Attorney General



AT A GLANCE

- * A statute may declare certain records to be exempt or confidential. If a record is **exempt**, a public entity may release it at its discretion. If the entity decides not to release an exempt record, that information is closed. If a record is **confidential**, the public entity either cannot release it or must cross out the confidential information first.
- * **Anyone** has the right to attend meetings of a public entity or access and obtain copies of the entity's records, **regardless** of where they live.
- * A public entity is **not** required to respond to questions from members of the public, or to create a record that does not exist.
- * An entity can close a meeting to talk with its attorney **if** the discussion pertains to the attorney's advice regarding a pending or reasonably predictable lawsuit involving the public entity. However, communications between a public entity and its attorney are **not** automatically confidential.
- * If a governing body delegates any authority to two or more people, the newly formed committee is also subject to the open records and meetings laws.
- * Public employee job performance reviews, salary and salary discussions are open, but other information in a personnel file may be exempt or confidential. Social security numbers are always confidential.
- * Confidentiality clauses in a settlement agreement involving a public entity are against public policy and are declared void by state law.
- * Although there are laws throughout the Century Code regarding open meetings and open records, the basic laws are found from Sections 44-04-17.1 through 44-04-31.

INFORMATION

Who is subject to the open records and meetings Laws?

All "public entities." This includes:

- State agencies;
- Political subdivisions;
- Private organizations or non-profit organizations that are supported by public funds or are expending public funds;
- Contractors—if the contractor is providing services **in place of** a public entity rather than simply providing services **to** that entity.

What do I need to know about the open records and meetings laws?

The terms "record" and "meeting" are defined broadly. To deny public access to a record or a meeting, you **first** have to identify the law that closes the record or the meeting. **Then** you need to explain that law to the person requesting access.

- To deny access to records, you must explain to the requester **within a reasonable time** the legal authority for denying the request. If asked, you **must** put your denial and explanation in writing.
- To deny access to a meeting, you have to explain the topics to be considered and the legal authority for closing the meeting **before** you can ask the public to leave the meeting.

What happens if we violate the law?

A member of the public may ask the Attorney General to issue an advisory opinion regarding the alleged violation of the open records or meetings laws. If the Attorney General finds that there was a violation, you will have seven days to take corrective action. Criminal prosecution also may result if the public entity or employee knowingly violated the law.

NOTICE OF MEETINGS

When is notice required?

Prior written notice is required for **all** open meetings. The notice **must** include the date, time and location of the meeting and the agenda topics the governing body expects to address during the meeting. Regular meeting agendas may be altered at the time of the meeting.

For special or emergency meetings, **only** the specific topics included in the notice may be discussed.

How do we provide notice of a meeting?

For **all** meetings, you must:

- File the notice with the appropriate central location (the Secretary of State for state agencies, the City Auditor for city-level entities, and the County Auditor for all other entities).
- Post the notice in the entity's main office (if it has one), **and** at the location of the meeting (if held somewhere other than the main office).
- Give the notice to anyone who has asked for it.

For special or emergency meetings, you must also notify the entity's official newspaper and any media representatives who have asked for notice of special or emergency meetings.

How far in advance must we provide notice?

As a general rule, there is no mandatory notice period for public meetings. Notice must be posted, filed with the central location, and given to anyone who has requested it, at the same time as the members of the governing body are notified of the meeting.



OPEN MEETINGS

What is a “meeting?”

As used in the open meetings law, the term “meeting” means any gathering of a quorum of the members of a governing body of a public entity regarding public business. The **form** of the gathering is irrelevant.

“Meeting” includes committees and subcommittees, informal gatherings or work sessions **and** discussions where a quorum of the members of the governing body are participating by telephone, either at the same time or in a series of individual conversations.

The **only** time a gathering of a quorum of members is not a meeting is if it is a purely social gathering—as soon as public business is discussed, it becomes a meeting.

Does the public have the right to speak at an open meeting?

No. The right to attend a public meeting does not include the right to participate in that meeting. However, other statutes may require a public hearing at which the public is allowed to comment on specific subjects.

How do we hold a closed meeting?

First you must convene in a properly noticed open meeting. Next, you must announce the legal authority to close the meeting **and** the topics to be considered during the closed meeting.

After that, unless the law requires a closed meeting, the governing body must vote on whether to close the meeting. Any executive session must be tape recorded for possible review by a court or the Office of the Attorney General.

Must roll call votes be recorded?

Yes. A recorded roll call vote is required on all substantive matters before the governing body.

OPEN RECORDS

What is a “record?”

The definition of "record" includes all recorded information, regardless of physical form (paper, e-mail, computer file, photographs, audiotape, or videotape) that has a connection with how public funds are spent or with a public entity's performance of its governmental functions.

What are we supposed to do when we receive a request for records?

You are required to respond to an open records request within a **reasonable** time, either by providing the requested record or by explaining the legal authority for denying all or part of the request. Depending on the amount of records requested, a “reasonable” time could be a couple of hours or a few days, but **not** several days or weeks.

You **cannot**:

- ⊗ Ask why the requester wants the records.
- ⊗ Ask the requester's identity.
- ⊗ Require the request be made in person—or in writing.
- ⊗ Require the requester pick up the records.

If you cannot fulfill the request immediately, you should give the requester an estimate of when the record will be available.

What if we are not sure whether a record is open?

Public officials and employees generally should know what records under their control must be disclosed. A delay to seek legal advice is reasonable only if there is a legitimate legal or factual question on what may be disclosed. It is **not** reasonable to delay responding to a request until the next meeting of the governing body.

What if we deny the request?

If a public entity denies a request for records, it must tell the requester what specific federal or

state law makes the requested record confidential or closed to the public. If the requester asks, the entity **must** put the reason for the denial in writing.

Can we deny access to an entire document if part of it is exempt or confidential?

No. You can only deny access to the items of recorded information for which there is a specific statute closing that information to the public. The remaining information must be open to the public.

Are we required to give unsupervised access to open records?

No. You must maintain the integrity of original public records, even if those records are open to the public. You can watch the requester to prevent unauthorized alteration or destruction of public records but you cannot intimidate a person under the guise of “supervising” the person's access.



Can we charge a fee for the records?

Access to records is generally free. For copies of records on 8½ x 11” or 8 ½ x 14” paper, you can charge **up to 25¢ per page**. For any other kind of copy (including photos, maps, computer records, etc.) you can charge the **actual cost** of making the copy, including labor, materials and equipment. Other statutes may authorize a different fee. You may require the requester to pay the charge before making or sending the copy. If the requester wants the records mailed, you can include the actual postage cost in your charge.

The first hour of locating the records is **free**. After the first hour, you can charge **up to \$25 per hour** for locating the records.

You can also charge **up to \$25 per hour** for the time it takes to review the records and cross out exempt or confidential information from open records; however, the first hour is **free**.